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Counsel for Plaintiff and the Class (Additional Counsel listed on Signature Page)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RICHARD SOTELO, on behalf of  
himself and all others similarly situated,

Plaintiff,

VS.

## RAWLINGS SPORTING GOODS COMPANY, INC.

Defendant.

CASE NO. 2:18-cv-09166-GW-MAA

Hon. George H. Wu

## **NOTICE OF SUPPLEMENTAL AUTHORITY**

1 Plaintiff Richard Sotelo, in support of his pending Amended Motion for Class  
2 Certification (the “Motion,” ECF No. 118), respectfully submits the attached  
3 supplemental authority. The Court’s July 29, 2021 tentative ruling on the Motion  
4 relied on the Ninth Circuit’s recent decision *Olean Wholesale Grocery Coop., Inc.*  
5 v. *Bumble Bee Foods LLC*, 993 F.3d 774, 786 (9th Cir. 2021). On August 3, 2021,  
6 Chief Judge Thomas of the Ninth Circuit issued the attached Order that the *Olean*  
7 decision be reheard *en banc*, and that the three-judge panel opinion be vacated.

8 Dated: August 3, 2021

9 Respectfully submitted,

10 By: /s/ Janine L. Pollack

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28 *Plaintiff's Counsel*

**FILED**

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

AUG 3 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

OLEAN WHOLESALE GROCERY  
COOPERATIVE, INC., BEVERLY  
YOUNGBLOOD, PACIFIC  
GROSERVICE, INC., DBA Pitco Foods,  
CAPITOL HILL SUPERMARKET,  
LOUISE ANN DAVIS MATTHEWS,  
JAMES WALNUM, COLIN MOORE,  
JENNIFER A. NELSON, ELIZABETH  
DAVIS-BERG, LAURA CHILDS; NANCY  
STILLER; BONNIE VANDERLAAN;  
KRISTIN MILLICAN; TREPCO IMPORTS  
AND DISTRIBUTION, LTD.;  
JINKYOUNG MOON; COREY NORRIS;  
CLARISSA SIMON; AMBER SARTORI;  
NIGEL WARREN; AMY JOSEPH;  
MICHAEL JUETTEN; CARLA LOWN;  
TRUYEN TON-VUONG, AKA David Ton;  
A-1 DINER; DWAYNE KENNEDY; RICK  
MUSGRAVE; DUTCH VILLAGE  
RESTAURANT; LISA BURR; LARRY  
DEMONACO; MICHAEL BUFF; ELLEN  
PINTO; ROBBY REED; BLAIR HYSNI;  
DENNIS YELVINGTON; KATHY  
DURAND GORE; THOMAS E.  
WILLOUGHBY III; ROBERT FRAGOSO;  
SAMUEL SEIDENBURG; JANELLE  
ALBARELLO; MICHAEL COFFEY;  
JASON WILSON; JADE CANTERBURY;  
NAY ALIDAD; GALYNA  
ANDRUSYSHYN; ROBERT BENJAMIN;  
BARBARA BUENNING; DANIELLE  
GREENBERG; SHERYL HALEY; LISA  
HALL; TYA HUGHES; MARISSA

No. 19-56514

D.C. No.  
3:15-md-02670-JLS-MDD  
Southern District of California,  
San Diego

**ORDER**

JACOBUS; GABRIELLE KURDT; ERICA PRUESS; SETH SALENGER; HAROLD STAFFORD; CARL LESHER; SARAH METIVIER SCHADT; GREG STEARNS; KARREN FABIAN; MELISSA BOWMAN; VIVEK DRAVID; JODY COOPER; DANIELLE JOHNSON; HERBERT H. KLEIGERMAN; BETH MILLINER; LIZA MILLINER; JEFFREY POTVIN; STEPHANIE GIPSON; BARBARA LYBARGER; SCOTT A. CALDWELL; RAMON RUIZ; THYME CAFE & MARKET, INC.; HARVESTERS ENTERPRISES, LLC; AFFILIATED FOODS, INC.; PIGGLY WIGGLY ALABAMA DISTRIBUTING CO., INC.; ELIZABETH TWITCHELL; TINA GRANT; JOHN TRENT; BRIAN LEVY; LOUISE ADAMS; MARC BLUMSTEIN; JESSICA BREITBACH; SALLY CRNKOVICH; PAUL BERGER; STERLING KING; EVELYN OLIVE; BARBARA BLUMSTEIN; MARY HUDSON; DIANA MEY; ASSOCIATED GROCERS OF NEW ENGLAND, INC.; NORTH CENTRAL DISTRIBUTORS, LLC; CASHWA DISTRIBUTING CO. OF KEARNEY, INC.; URM STORES, INC.; WESTERN FAMILY FOODS, INC.; ASSOCIATED FOOD STORES, INC.; GIANT EAGLE, INC.; MCLANE COMPANY, INC.; MEADOWBROOK MEAT COMPANY, INC.; ASSOCIATED GROCERS, INC.; BILO HOLDING, LLC; WINNDIXIE STORES, INC.; JANET MACHIN; DEBRA L. DAMSKE; KEN DUNLAP; BARBARA E. OLSON; JOHN PEYCHAL; VIRGINIA RAKIPI; ADAM BUEHRENS; CASEY CHRISTENSEN;

SCOTT DENNIS; BRIAN DEPPERSCHMIDT; AMY E. WATERMAN; CENTRAL GROCERS, INC.; ASSOCIATED GROCERS OF FLORIDA, INC.; BENJAMIN FOODS LLC; ALBERTSONS COMPANIES LLC; H.E. BUTT GROCERY COMPANY; HYVEE, INC.; THE KROGER CO.; LESGO PERSONAL CHEF LLC; KATHY VANGEMERT; EDY YEE; SUNDE DANIELS; CHRISTOPHER TODD; PUBLIX SUPER MARKETS, INC.; WAKEFERN FOOD CORP.; ROBERT SKAFF; WEGMANS FOOD MARKETS, INC.; JULIE WIESE; MEIJER DISTRIBUTION, INC.; DANIEL ZWIRLEIN; MEIJER, INC.; SUPERVALU INC.; JOHN GROSS & COMPANY; SUPER STORE INDUSTRIES; W LEE FLOWERS & CO INC.; FAMILY DOLLAR SERVICES, LLC; AMY JACKSON; FAMILY DOLLAR STORES, INC.; KATHERINE MCMAHON; DOLLAR TREE DISTRIBUTION, INC.; JONATHAN RIZZO; GREENBRIER INTERNATIONAL, INC.; JOELYNA A. SAN AGUSTIN; ALEX LEE, INC.; REBECCA LEE SIMOENS; BIG Y FOODS, INC.; DAVID TON; KVAT FOOD STORES, INC., DBA Food City; AFFILIATED FOODS MIDWEST COOPERATIVE, INC.; MERCHANTS DISTRIBUTORS, LLC; BROOKSHIRE BROTHERS, INC.; SCHNUCK MARKETS, INC.; BROOKSHIRE GROCERY COMPANY; KMART CORPORATION; CERTCO, INC.; RUSHIN GOLD, LLC, DBA The Gold Rush; UNIFIED GROCERS, INC.;

TARGET CORPORATION; SIMON-HINDI, LLC; FAREWAY STORES, INC.; MORAN FOODS, LLC, DBA Save-A-Lot; WOODMAN'S FOOD MARKET, INC.; DOLLAR GENERAL CORPORATION; SAM'S EAST, INC.; DOLGENCORP, LLC; SAM'S WEST, INC.; KRASDALE FOODS, INC.; WALMART STORES EAST, LLC; CVS PHARMACY, INC.; WALMART STORES EAST, LP; BASHAS' INC.; WAL-MART STORES TEXAS, LLC; MARC GLASSMAN, INC.; WAL-MART STORES, INC.; 99 CENTS ONLY STORES; JESSICA BARTLING; AHOLD U.S.A., INC.; GAY BIRNBAUM; DELHAIZE AMERICA, LLC; SALLY BREDBERG; ASSOCIATED WHOLESALE GROCERS, INC.; KIM CRAIG; MAQUOKETA CARE CENTER; GLORIA EMERY; ERBERT & GERBERT'S, INC.; ANA GABRIELA FELIX GARCIA; JANET MACHEN; JOHN FRICK; PAINTED PLATE CATERING; KATHLEEN GARNER; ROBERT ETEN; ANDREW GORMAN; GROUCHO'S DELI OF FIVE POINTS, LLC; EDGARDO GUTIERREZ; GROUCHO'S DELI OF RALEIGH; ZENDA JOHNSTON; SANDEE'S CATERING; STEVEN KRATKY; CONFETTI'S ICE CREAM SHOPPE; KATHY LINGNOFSKI; END PAYER PLAINTIFFS; LAURA MONTOYA; KIRSTEN PECK; JOHN PELS; VALERIE PETERS; ELIZABETH PERRON; AUDRA RICKMAN; ERICA C. RODRIGUEZ,

Plaintiffs-Appellees,

and

JESSICA DECKER, JOSEPH A.  
LANGSTON, SANDRA POWERS,  
GRAND SUPERCENTER, INC., THE  
CHEROKEE NATION, US FOODS, INC.,  
SYSCO CORPORATION, GLADYS, LLC,  
SPARTANNASH COMPANY, BRYAN  
ANTHONY REO,

Plaintiffs,

v.

BUMBLE BEE FOODS LLC; TRI-UNION  
SEAFOODS, LLC, DBA Chicken of the Sea  
International, DBA Thai Union Group PCL,  
DBA Thai Union North America, Inc.;  
STARKIST CO.; DONGWON  
INDUSTRIES CO., LTD.; THAI UNION  
GROUP PCL,

Defendants-Appellants,

and

KING OSCAR, INC.; THAI UNION  
FROZEN PRODUCTS PCL; DEL MONTE  
FOODS COMPANY; TRI MARINE  
INTERNATIONAL, INC.; DONGWON  
ENTERPRISES; DEL MONTE CORP.;  
CHRISTOPHER D. LISCHEWSKI; LION  
CAPITAL (AMERICAS), INC.; BIG  
CATCH CAYMAN LP, AKA Lion/Big  
Catch Cayman LP; FRANCIS T  
ENTERPRISES; GLOWFISCH  
HOSPITALITY; THAI UNION NORTH  
AMERICA, INC.,

Defendants.

**THOMAS**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Circuit Rule 35-3. The three-judge panel opinion is vacated.

Judges McKeown, Wardlaw, Berzon, Owens, Miller, Collins, Bress, and Forrest did not participate in the deliberations or vote in this case.